

### **REMARKS**

Claims 1-11 are now pending in the application. New Claims 12 and 13 are presented herein for consideration.

Minor amendments have been made to the claims to simply overcome the objections to the specification and rejections of the claims under 35 U.S.C. § 112. The amendments to the claims contained herein are of equivalent scope as originally filed and, thus, are not a narrowing amendment.

If the Examiner relies on new references in rejecting the Claims in the next Office Action, a Final Office Action would not be appropriate since the amendments to the claims do not change the scope of the claims. Under present practice, second or any subsequent actions on the merits shall be final, except where the Examiner introduces a new ground of rejection that is not necessitated by Applicant's amendment of the claims. **See MPEP § 706.07(a).**

The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **REJECTION UNDER 35 U.S.C. § 112**

Claims 1-11 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicant regards as the invention. This rejection is respectfully traversed.

The Examiner asserts that the claim limitation "a fastener that is associated with at least one of said lotion impregnated sheet and said applicator body" is unclear. Applicant respectfully asserts that this language is very clear. Either the fastener is

associated with the sheet, the applicator body or both. The use of “at least one of” language is well known and is the correct way to claim one or the other or both. In the drawings, the fasteners are associated with the body. The specification also states other variations at least in Paragraph 25 that involve the fastener being associated with the sheet as well. Therefore, this rejection is moot for at least these reasons.

The Examiner also alleges that it is unclear how many sheets are being claimed. The Examiner incorrectly states that the claim includes “at least one of said sheets”. Applicant respectfully points out that the claim does not expressly refer to plural “**sheets**” as suggested by the Examiner. Rather, the claim refers to “at least one of said lotion-impregnated **sheet** and said applicator body”. This language is clear and in proper form for the reasons set forth above.

Additionally, the Examiner is respectfully reminded that open-ended language such as “comprising” means that the claim must include one **but may include more**. Therefore, since one sheet is claimed and the claim uses the term “comprising”, the claim will automatically be construed to include one **or more sheets**.

As for the use of the term “substantially”, while Applicant disagrees with this rejection, Applicant has removed this term in the interest of expediting prosecution.

Applicant respectfully asserts that the rejections under 35 U.S.C. § 112 are moot for at least these reasons.

### **REJECTION UNDER 35 U.S.C. § 103**

Claims 1-11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Steinberg (U.S. Pat. No. 6,981,293). This rejection is respectfully traversed.

With respect to Claim 1, Steinberg et al. does not at least show, teach or suggest a lotion applicator comprising a sheet that is impregnated with lotion and that is removably attached to a body.

As best understood by Applicants, Steinberg et al. is directed to a device for cleansing and removal of debris from excretory and vaginal orifices and surrounding areas. For example, the background section of Steinberg et al. clearly describes various devices for cleansing these areas of a person's body.

Steinberg et al. teaches away from the use of sheets impregnated with lotion. Rather, Steinberg et al. teaches the use of a refillable lotion attachment – not a disposable lotion-impregnated sheet.

Only one attachment described by Steinberg et al. (in conjunction with FIG. 7) relates to lotion or lotion dispensing. (Steinberg et al. at Col. 3, line 14 and Col. 5, lines 19-26). The lotion attachment includes a refillable housing that stores the lotion and that uses a roller ball to release the lotion. Applicants' specification clearly described the disadvantages of these types of devices in paragraphs [0005]-[0006]. For example, the lotion dries when not in use, which tends to clog the device. Changing the type of lotion requires removal, cleaning, refilling and re-attachment, which can be time consuming. It is therefore difficult to apply two different types of lotion quickly.

In FIG. 8 and the corresponding description, Steinberg et al. refers to a "disposable sheet" that can be removably attached to a body. (Steinberg et al. at Column 3, line 20). The disposable sheet is used for cleaning and removal of debris – not applying lotion. There is no teaching or suggestion anywhere in Steinberg that the disposable sheet is impregnated with lotion. Based on the other portions of the

specification of Steinberg et al, the disposable sheet appears to be used for removal of debris from excretory and vaginal orifices and surrounding areas – and nothing else.

While Steinberg et al. refers to the impregnation of the handle or body with antibacterial material (Steinberg, Col. 2, line 29), this is not the same as or similar to the impregnation of disposable sheets with lotion. For example, Steinberg et al. states:

A remote end of the body is suitably configured for supporting, in a further angularly configurable fashion, a hygienic related accessory. In a preferred embodiment, both the body as well as the hygienic accessory is provided with anti-bacterial capability. This includes both pre-application of a coating or powder, as well as instances in which the antibacterial aspect is impregnated or otherwise integrally within the material construction of the body.

Steinberg et al. at Column 2, Line 23. Thus, the body or handle may include antibacterial material. However, the disposable sheets are not impregnated with antibacterial material. Furthermore, antibacterial material is not lotion.

It is a longstanding rule that to establish a prima facie case of obviousness of a claimed invention, **all of the claim limitations** must be taught or suggested by the prior art. *In re Royka*, 180 USPQ 143 (CCPA 1974), see MPEP §2143.03. Here, Steinberg et al. fail to teach all of the limitations of Claim 1. Furthermore, when evaluating claims for obviousness under 35 U.S.C. §103, all of the limitations must be considered and given weight. *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), MPEP § 2144.03. Therefore, the Examiner is not entitled to ignore this limitation.

Claim 1 is allowable over Steinberg et al. for at least these reasons. Claim 7 is allowable over Steinberg et al. for at least similar reasons as Claim 1. Claims 2-6 and 12 and 8-11 and 13 are dependent on Claims 1 and 7, respectively, and are allowable for at least similar reasons.

With respect to Claim 6, Steinberg et al. fail to show, teach or suggest the applicator body includes a top surface having an arcuate cross section and a bottom surface having a substantially planar surface.

Since Steinberg et al. is directed to a device for cleansing and removal of debris from excretory and vaginal orifices and surrounding areas, Steinberg et al. discloses planar top and bottom surfaces that are parallel. This design appears to allow the device to be positioned in these tight locations. In other words, the shape of the body in Steinberg et al. is more anatomically correct for removal of debris from these locations.

In contrast, the arcuate cross section of Applicant's lotion applicator provides an anatomically correct profile to allow application of lotion using the disposable lotion-impregnated sheets. For example only, the arcuate cross section of Applicant's lotion applicator enables the user to evenly apply a topical lotion to the curves and contours of the shoulder and back areas (but not limited to these areas). These areas have a curved profile. The flat profile of the Steinberg et al. device would not work nearly as well.

Therefore, Claims 6, 11, 12 and 13 are allowable for at least these reasons as well.

Claims 1-11 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brower et al. (U.S. Pat. No. 6,981,293) in view of Altobellis et al. (U.S. Patent No 6,261,014). This rejection is respectfully traversed.

Neither Brower et al. nor Altobellis et al. show, teach or suggest a fastener that is associated with at least one of the lotion-impregnated sheet and the applicator body and that removably attaches the lotion-impregnated sheet to the applicator body.

A reference must be considered for all that it teaches including disclosures that point towards the invention and disclosures that teach away from the invention. *In re Dow*, 5 USPQ.2d 1529 (Fed. Cir. 1988). It is improper to take teachings in the prior art out of context and give them meanings that they would not have to those skilled in the art. *In re Wright*, 9 USPQ.2d 1649 (Fed. Cir 1989).

The applicator of Brower et al. is intended to be worn on a user's hand. There is no teaching or suggestion that the applicator can be attached to a handle and a body using a fastener as claimed by Applicants. Furthermore, Brower et al. emphasizes portability of the device. In other words, Brower et al. was designed to be small so that it can be easily carried. Therefore it is inconsistent to suggest that one skilled in the art would combine the Brower et al device with the more cumbersome arrangement described in Altobellis et al.

The applicator of Altobellis et al. stores the lotion in the applicator head. Applicants' specification clearly described the disadvantages of these types of devices. For example, the lotion dries when not in use, which tends to clog the device. Changing the type of lotion requires removal, cleaning, refilling and re-attachment, which can be time consuming. It is therefore far more difficult to apply two different types of lotion quickly. Applicants' design merely requires removal of the disposable sheet and replacement with another disposable sheet with a different type of lotion.

Furthermore, neither device shows, teaches or suggests the claimed fastener. The Brower et al. device does not contemplate fastening the lotion applicator described therein to a handle. In addition, the Altobellis et al. device does not describe attaching disposable sheets to the head since it employs a housing containing lotion. Therefore neither reference discloses a fastener.

It is a longstanding rule that to establish a prima facie case of obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 USPQ 143 (CCPA 1974), see MPEP §2143.03. Furthermore, when evaluating claims for obviousness under 35 U.S.C. §103, all of the limitations must be considered and given weight. *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), MPEP § 2144.03.

The Examiner has not properly supported the rationale for combining the substantially different approaches and devices described in Brower et al. and Altobellis et al. The brief and conclusory explanation offered by the Examiner falls far short of the type of **explicit analysis** that is required by the Supreme Court in *KSR Int'l v. Teleflex Inc.*, 550 U.S. \_\_\_\_ (2007) and under the new USPTO KSR Guidelines. Absent an express teaching or suggestion in the references, the explicit analysis and reasoning must be supplied by the Examiner. *Id.* In other words, the Examiner is required to provide explicit reasoning as to why one skilled in the art would be motivated to combine the Brower et al. and Altobellis et al. references. The Examiner has failed to do so here.

Claim 1 is allowable over Brower et al. and Altobellis et al. for at least these reasons. Claim 7 is allowable over Brower et al. and Altobellis et al. for at least similar

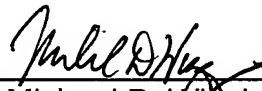
reasons as Claim 1. Claims 2-6 and 12 and 8-11 and 13 are dependent on Claims 1 and 7, respectively, and are allowable for at least similar reasons.

#### **CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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